

Part 2

Jurisdiction

78B-13-201 Initial child custody jurisdiction.

- (1) Except as otherwise provided in Section 78B-13-204, a court of this state has jurisdiction to make an initial child custody determination only if:
 - (a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
 - (b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 78B-13-207 or 78B-13-208; and
 - (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this state other than mere physical presence; and
 - (ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
 - (c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 78B-13-207 or 78B-13-208; or
 - (d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).
- (2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
- (3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-202 Exclusive, continuing jurisdiction.

- (1) Except as otherwise provided in Section 78B-13-204, a court of this state that has made a child custody determination consistent with Section 78B-13-201 or 78B-13-203 has exclusive, continuing jurisdiction over the determination until:
 - (a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
 - (b) a court of this state or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this state.
- (2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section 78B-13-207.
- (3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 78B-13-201.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-203 Jurisdiction to modify determination.

Except as otherwise provided in Section 78B-13-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Subsection 78B-13-201(1)(a) or (b) and:

- (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 78B-13-202 or that a court of this state would be a more convenient forum under Section 78B-13-207; or
- (2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-204 Temporary emergency jurisdiction.

- (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
- (2) If there is no previous child custody determination that is entitled to be enforced under this chapter, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, a child custody determination made under this section becomes a final determination, if:
 - (a) it so provides; and
 - (b) this state becomes the home state of the child.
- (3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, any order issued by a court of this state under this section shall specify in the order a period of time which the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 78B-13-201 through 78B-13-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.
- (4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made, by a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 78B-13-201 through 78B-13-203, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-205 Notice -- Opportunity to be heard -- Joinder.

- (1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 78B-13-108 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.
- (2) This chapter does not govern the enforceability of a child custody determination made without notice and an opportunity to be heard.
- (3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-206 Simultaneous proceedings.

- (1) Except as otherwise provided in Section 78B-13-204, a court of this state may not exercise its jurisdiction under this chapter if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 78B-13-207.
- (2) Except as otherwise provided in Section 78B-13-204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 78B-13-209. If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
- (3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
 - (a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
 - (b) enjoin the parties from continuing with the proceeding for enforcement; or
 - (c) proceed with the modification under conditions it considers appropriate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-207 Inconvenient forum.

- (1) A court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.
- (2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate that a court of another state exercise jurisdiction. For this purpose,

the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
 - (b) the length of time the child has resided outside this state;
 - (c) the distance between the court in this state and the court in the state that would assume jurisdiction;
 - (d) the relative financial circumstances of the parties;
 - (e) any agreement of the parties as to which state should assume jurisdiction;
 - (f) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
 - (g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
 - (h) the familiarity of the court of each state with the facts and issues of the pending litigation.
- (3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
- (4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-208 Jurisdiction declined by reason of conduct.

- (1) Except as otherwise provided in Section 78B-13-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:
- (a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
 - (b) a court of the state otherwise having jurisdiction under Sections 78B-13-201 through 78B-13-203 determines that this state is a more appropriate forum under Section 78B-13-207; or
 - (c) no other state would have jurisdiction under Sections 78B-13-201 through 78B-13-203.
- (2) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 78B-13-201 through 78B-13-203.
- (3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-209 Information to be submitted to court.

- (1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:
 - (a) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parent-time with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;
 - (b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and
 - (c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parent-time with, the child and, if so, the names and addresses of those persons.
- (2) If the information required by Subsection (1) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.
- (3) If the declaration as to any of the items described in Subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
- (4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.
- (5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-210 Appearance of parties and child.

- (1) A court of this state may order a party to a child custody proceeding who is in this state to appear before the court personally with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear physically with the child.
- (2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 78B-13-108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.
- (3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
- (4) If a party to a child custody proceeding who is outside this state is directed to appear under Subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Renumbered and Amended by Chapter 3, 2008 General Session